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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/165,460	10/02/1998	JASPER D. RINE	B96-021-3	7914

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EXAMINER

RAMIREZ, DELIA M

ART UNIT	PAPER NUMBER
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1652

28

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/165,460

Applicant(s)

RINE ET AL.

Examiner

Delia M. Ramirez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31,33-35,37-39,41-43,45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 31,35,37-39,43,45 and 46 is/are rejected.
- 7) ☒ Claim(s) 33,34,41 and 42 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Status of the Application

Claims 31, 33-35, 37-39, 41-43, 45-46 are pending.

Prosecution of the instant application has been reopened in view of the Board's decision to remand the instant application to the Examiner. The Reply Brief was filed on 8/25/2003, three months after the mailing of the Examiner's Answer. Since the Reply Brief was untimely filed, the Examiner has not considered it. However, the Examiner has considered the Board's statements regarding the introduction of new evidence, which according to the Board, Applicants have not had an opportunity to respond to. For the record, the Examiner strongly disagrees with the contention that the copies of the e-mail message received by USPTO personnel purporting to establish a publication date is "new evidence" which Applicants have not been able to confront. Applicants were specifically informed in the Advisory Action mailed on 2/21/2003 that communications between representatives of GenBank/EMBL and USPTO personnel clearly indicated that the creation dates are the dates when the entries in question first became available to the public. See page 2, paragraph 3 of the Advisory Action. As indicated in the header section of the paper copy of this e-mail communication, such communication was forwarded to the Examiner on 2/12/2002, a few days before the mailing of the Advisory Action, therefore corroborating that that this e-mail communication is the one being referred to in the Advisory Action. The copies of the e-mails, as submitted in the Examiner's Answer, were merely paper copies of communications whose contents Applicants were well aware of, as evidenced by the Advisory Action, page 2, paragraph 3.

While the Board recommends either submission of a new Examiner's Answer without the copies of the e-mails to avoid the introduction of "new evidence", or reopening prosecution if the Examiner agrees that the e-mails are new evidence which Applicants have not been able to address, the Examiner has reopened prosecution solely to ensure that the paper copies of the e-mail communications referred to

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in the Advisory Action are made part of the record. As such, the remarks made by the Examiner in response to Applicant 's Appeal Brief will be included in their entirety in the instant action.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 33-34 and 41-42 were rejected under 35 103(a) as being unpatentable over Rose et al. (GenBank accession number Z49617, October 6, 1995) in view of Nozaki et al. (U.S. Patent No. 4,997,767, March 1991). As indicated in the Examiner's Answer mailed on 5/20/2003, the polynucleotide of SEQ ID NO: 1 is identical to the polynucleotide of Rose et al. except for one mismatch at position 1664. The protein encoded by the polynucleotide of Rose et al. (Swiss Prot accession number P47154, February 1, 1996) is identical to the polypeptide of SEQ ID NO: 2 except for one mismatch at position 441. Since Rose et al. does not teach a polynucleotide which encodes the polypeptide of SEQ ID NO: 2 in its entirety, the teachings of Rose et al. do not anticipate or make obvious the expression vector and host cells of claims 33-34 and 41-42, therefore the 35 USC 103(a) rejection is hereby withdrawn as it applies to claims 33-34 and 41-42.
3. Claims 31 and 39 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rose et al. (GenBank accession number Z49617, October 6, 1995) in view of Nozaki et al. (U.S. Patent No. 4,997,767, March 1991). This rejection has been discussed at length in Paper No. 16, mailed on 3/27/2001 and in the Examiner's Answer mailed on 5/20/2003. Applicant's arguments in regard to this rejection have been fully addressed in the Examiner's Answer mailed on 5/20/2003. However, in view of the Board's decision regarding new evidence establishing a publication date for the Rose et al. reference, the Examiner's remarks in response to the arguments presented by Applicants in the Appeal Brief will be reiterated verbatim as follows.

4. In page 3, first paragraph of the argument, Appellants argue that the Examiner's rejection of claims 31 and 39 over Rose et al. in view of Nozaki et al. is not in compliance with the notice requirement of 35 USC 132, which requires reason and information and references useful in judging the propriety of the rejection.

It is unclear to the Examiner as to which is the information or references which were not submitted to Appellants to judge the propriety of the rejection. As indicated in previous Office Action Paper No. 20, paragraph 2, mailed on 2/2/1/2002, PTO records indicate that the references cited by the prior Examiner of record were submitted to Appellants. In case these references were misplaced previously, the present Examiner submitted a duplicate of these references with Paper No. 20. Since Appellants do not clearly indicate which is the information/references which are missing, the present Examiner cannot determine from Appellant's argument, which is the information that Appellants were not provided with by the previous Examiner of record.

5. In page 3, second paragraph of the argument, Appellants argue that the entry by Rose et al. (GenBank accession number Z49617) is dated August 11, 1997, which is more than a year after the priority date claimed by Appellants, August 7, 1996, therefore it is not prior art. Appellants submit that the Examiner has hand-written on the NCBI printout "Public Availability: 10/6/1995". Appellants further argue that upon a telephone inquiry, the Examiner indicated that the support for his hand-written comment was a "creation date" annotation associated with the GenBank entry however Appellants assert that the annotation indicates that the entry was updated on August 11, 1997.

It is noted for the record that the present Examiner did not submit Appellants a hand-written publication date on an NCBI printout as alleged. Furthermore, the present Examiner did not have a telephonic conversation with Appellants to discuss the hand-written annotation as alleged. In regard to arguments that entry Z49617 was first available to the public on August 11, 1997, it is noted that the creation date of the entry is the date when it is first available to the public, which in this case is October 6,

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1995. The PTO Biotechnology and Chemical Library has contacted EMBL to determine the date of public availability of entry Z49617 and a copy of an e-mail communication with a representative of EMBL is submitted herein. Z49617 was first submitted to the EMBL databank. As it can be seen in such e-mail, it is clearly stated that the date given in the first DT line of the entry is the date the entry first became available for public disclosure. Therefore, for entry Z49617, that date corresponds to October 6, 1995, as shown in the attached e-mail. In the absence of any evidence which would suggest that the sequence in the instant entry was modified in 1997 or that there was a request to withhold its public disclosure until 1997, the Examiner must assume that the instant entry was first disclosed to the public on October 6, 1995.

6. In page 3, last paragraph, and continuing in page 4, Appellants argue that the creation date of an EMBL or GenBank record is not the public availability date. Appellants argue that in many cases, these records are maintained in secrecy until a predetermined publication or patent filing date is effected. Furthermore, Appellants argue that the creation date often does not reflect the record as subsequently published and that electronic databases such as GenBank or EMBL are constantly updating, amending, annotating or supplementing their records. According to Appellants, the newer editions retain the creation date of the original record but were not in existence at the creation date. It is Appellant's position that the Examiner seeks to rely on a creation date for a record which could not have logically existed on that creation date. Appellants further argue that they have provided copies of GenBank and EMBL information in regard to submissions as evidence of withholding public availability of records after submission and record creation as well as a sample of a GenBank record as evidence of the lack of agreement between the date of the last modification and the release date.

The Examiner acknowledges (1) submissions may be withheld for public disclosure until a predetermined publication or patent filing date is effected, (2) entries in EMBL or GenBank are constantly being updated, amended or annotated, and (3) Appellant's submission of information for

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submitters of data to GenBank and EMBL as well as the submission of a sample GenBank record, however these arguments have not been found persuasive to overcome the rejection for the following reasons. As indicated by Appellants and known in the art, when submissions to data banks such as GenBank or EMBL are made, authors can request to withhold public disclosure until an author-specified date. The date when the submission is made to GenBank or EMBL is called "submission date" and it should never be used for prior art purposes in view of the fact that public disclosure of the entry may have been delayed for the reasons set forth above. The date when the entry is first released to the public is called "creation date", as evidenced by the e-mail communication submitted herein. In the instant case, entry Z49617 has a submission date of September 25, 1995 as indicated in the GenBank entry under "Journal", which is not the date used by the Examiner for prior art purposes but rather the creation date, which is October 6, 1995.

Appellants have presented no evidence which would suggest that the polynucleotide disclosed by Rose et al. was withheld from public disclosure after its creation date or that it was updated or amended to the extent that its sequence is different from what it was when it was created in October 6, 1995. The Examiner acknowledges that entry Z49617 was updated in August 11, 1997. However there is no evidence in the record as disclosed in GenBank or provided by Appellants which suggest that this update resulted in a different sequence from what was available in October 6, 1995. As indicated by Appellants, GenBank and EMBL are constantly updating, annotating and/or supplementing their records. Therefore, the update of August 11, 1997 could have been a new annotation, a typographical correction, an additional author added, etc. The National Center for Biotechnology Information (NCBI) website <http://www.ncbi.nlm.nih.gov:80/entrez/sutils/girevhist.cgi>, provides a Sequence Revision History tool which allows one to access the different versions, GI numbers and update dates for sequences. The existence of this tool is also disclosed in the sample GenBank record provided by Appellants in page 8, under "Version". As known in the art and also disclosed in the sample GenBank record provided by

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Appellants (pages 8-9, "Version" and "GI"), if there are changes made to a sequence, the version number will increase and the GI (GenInfo Identifier) number will also change. A copy of (1) the sequence corresponding to entry Z49617 as of its creation date, October 6, 1995, the sequence corresponding to entry Z49617 as of August 11, 1997, and a copy of the sequence revision history for entry Z49617 are submitted herein. Z49617 was first seen at NCBI on October 8, 1995. As shown in the revision history, there are no changes to the GI or version numbers for this entry which would indicate changes in sequence. Furthermore, a comparison of the sequences as of October 6, 1995 and August 11, 1997 do not appear to show any changes in sequence. Therefore, in the absence of any evidence which would suggest that the sequence in the instant entry was modified in 1997 or that there was a request to withhold its public disclosure until 1997, the Examiner must assume that the instant entry was first disclosed to the public on October 6, 1995.

7. In page 4, second paragraph, Appellants submit that the Examiner seeks to shift the burden to Appellants to prove that Rose et al. is not prior art. Appellants argue that this imposes an inherently impossible proof on Appellants. It is Appellant's position that the Examiner should allow the pending claims unless a prima facie case of unpatentability can be established. Appellants submit that the evidence unequivocally demonstrates that Rose et al. was not publicly available as of October 6, 1995.

The Examiner disagrees with Appellant's contention that the Examiner has not established a prima facie case of unpatentability. As indicated above, a representative from EMBL has indicated that the creation data is the date when an entry is first disclosed to the public. In addition, while it is agreed that the entry was modified on August 11, 1997, there is no evidence in the record or provided by Appellants that the modification resulted in a sequence change. As indicated above, the sequence revision history provided herein clearly indicates that no changes have been made based on the fact that the GI and version numbers are the same throughout the history of the entry. Furthermore, there is no evidence that entry Z49617 was withheld from public disclosure until 1997. Therefore, in view of the

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information provided by EMBL, as evidenced by the e-mail communication provided, and the information disclosed by NCBI as discussed above, one would reasonably conclude that the creation date of entry Z49617 is the date of public availability and that no sequence changes have been made to such entry. As such, the polynucleotide of Rose et al. is considered valid prior art.

8. In page 4, last paragraph, and the beginning of page 5, Appellants submit that the entire yeast genome had been largely sequenced prior to the filing of their patent application, including the identification of thousands of potential open reading frames (ORF), i.e. polynucleotides which can encode proteins. However, Appellants argue that the sequence of the yeast genome is just an inherent property of the prior art genome itself and provides no more suggestion for isolating, recombinantly expressing and using a particular gene than does the unsequenced yeast genome. Furthermore, Appellants argue that a computer-predicted ORF may not necessarily encode a functional mRNA and even if these ORFs have a sequence similar to that required in their expression vectors, the claimed vectors would not be anticipated or obvious. Appellants argue that the claimed vectors are not obvious since they do not encompass any natural yeast chromosome and require that the recited coding sequence be operably linked to a promoter. It is Appellant's contention that in the absence of any evidence for function, there would be no motivation to select one of thousands of potential yeast ORFs of unknown function and operably link it to a promoter in an expression vector.

While one could argue that computer predicted ORF may not necessarily encode a functional mRNA, the Examiner disagrees with Appellant's contention that if an ORF is known, there is no motivation to make an expression vector comprising said ORF if the function is unknown. On the contrary, once an ORF is known, one would be highly motivated to construct an expression vector with the ORF linked to a promoter, transform a host cell and recombinantly produce the corresponding protein in order to characterize the protein and determine its biological function. It is noted that a promoter is essential for expression in a host cell, therefore one would have to use a promoter for expression and

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production of the corresponding protein. In this particular case, as indicated above, one is motivated to characterize and determine the biological role of a yeast protein since yeast is a unicellular eukaryote widely studied in the art for identification of proteins and/or biological processes which may be found in higher eukaryotes including humans. Therefore, for the reasons set forth above, the construction of the claimed vector and transformation of the claimed host cell would have been obvious at the time the invention was made.

9. Claims 35, 37-38, 43, 45 and 46 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lye et al. (GenBank accession number Z49260, May 16, 1995) in view of Nozaki et al. (U.S. Patent No. 4,997,767, March 1991). This rejection has been discussed at length in Paper No. 16, mailed on 3/27/2001 and in the Examiner's Answer mailed on 5/20/2003. Applicant's arguments in regard to this rejection have been fully addressed in the Examiner's Answer mailed on 5/20/2003. However, in view of the Board's decision regarding new evidence establishing a publication date for the Lye et al. reference, the Examiner's remarks in response to the arguments presented by Applicants in the Appeal Brief will be reiterated verbatim as follows.

10. In page 5, first paragraph, Appellants argue that the Examiner's rejection of claims 35, 37-38, 43 and 45-46 over Lye et al. in view of Nozaki et al. is not in compliance with the notice requirement of 35 USC 132, which requires reason and information and references useful in judging the propriety of the rejection.

It is unclear to the Examiner as to which is the information or references which were not submitted to Appellants to judge the propriety of the rejection. As indicated in previous Office Action Paper No. 20, paragraph 2, mailed on 2/2/2002, PTO records indicate that the references cited by the prior Examiner of record were submitted to Appellants. In case these references were previously misplaced, the present Examiner submitted a duplicate of these references with Paper No. 20. Since

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Appellants do not clearly indicate which is the information/references which are missing, the present Examiner cannot determine from Appellant's argument, which is the information that Appellants were not provided with by the previous Examiner of record.

11. In page 5, second paragraph, Appellants argue that Lye et al. is not prior art since it is dated August 11, 1997, more than a year after the priority date claimed by Appellants, which is August 7, 1996. Appellants argue that the Examiner is relying on a purported unpublished submission date which is improper and that no evidence has been presented that the sequence in entry Z49260 was published before August 11, 1997.

In regard to Appellant's contention that Lye et al. is not proper prior art, it is noted that according to EMBL records, the date entry Z49260 (Locus SC8156) was first available to the public is May 16, 1995, which is not the date when the entry was first submitted but rather when it was created, i.e. publicly available. The submission date is May 12, 1995. The PTO Biotechnology and Chemical Library has contacted EMBL to determine the date of public availability of entry Z49260 and a copy of an e-mail communication with a representative of EMBL is submitted herein. Z49260 was first submitted to the EMBL databank. As it can be seen in such e-mail, it is clearly stated that the date given in the first DT line of the entry is the date the entry first became available for public disclosure. Therefore, for entry Z49260, that date corresponds to May 16, 1995, as shown in the attached e-mail.

The Examiner acknowledges that entry Z49260 was updated in August 11, 1997. However there is no evidence in the record as disclosed in GenBank/EMBL or provided by Appellants which suggest that this update resulted in a different sequence from what was available in May 16, 1995. As indicated by Appellants, GenBank and EMBL are constantly updating, annotating and/or supplementing their records, therefore the update of August 11, 1997 could have been a new annotation, a typographical correction, an additional author added, etc. As indicated above, the National Center for Biotechnology Information (NCBI) website <http://www.ncbi.nlm.nih.gov:80/entrez/sutils/girevhist.cgi>, provides a

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Sequence Revision History tool which allows one to access the different versions, GI numbers and update dates for sequences. The existence of this tool is also disclosed in the sample GenBank record provided by Appellants in page 8, under "Version". A copy of (1) the sequence corresponding to entry Z49260 as of its creation date, May 16, 1995, the sequence corresponding to entry Z49260 as of August 11, 1997, and a copy of the sequence revision history for entry Z49260 are submitted herein. Z49260 was first seen at NCBI on May 19, 1995. As shown in the revision history, there are no changes to the GI or version numbers for this entry which would indicate changes in sequence. Appellants have presented no evidence which would suggest that the polynucleotide disclosed by Lye et al. was withheld from public disclosure after its creation date or that it was updated or amended to the extent that its sequence is different from what it was when it was created in May 16, 1995. In the absence of any evidence which would suggest that the sequence in the instant entry was modified in 1997 or that there was a request to withhold its public disclosure until 1997, the Examiner must assume that the instant entry was first disclosed to the public on May 16, 1995. Therefore, in view of the information provided by EMBL, as evidenced by the e-mail communication provided, and the information disclosed by NCBI, one would reasonably conclude that the creation date of entry Z49260 is the date of public availability and that no sequence changes have been made to such entry. As such, the polynucleotide of Lye et al. is considered valid prior art.

12. In page 5, third paragraph, continuing in page 6, Appellants submit that as previously discussed, the entire yeast genome had been sequenced prior to the filing of the instant application, including the identification of potential ORFs which may not even encode a functional mRNA. Appellants argue that Lye et al. discloses computer prediction of thousands of possible CDS regions. Appellants submit that the predictions of Lye et al. are the result of a computer programmed to input raw genomic sequences, select all possible CDS regions over 100 codons, and then exclude those that are more than 50% overlapped by a larger predicted CDS. Appellants assert that Lye et al. indicates that CDS regions of the

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initial dataset are available upon request and that the reference teaches algorithm-predicted PROSITE database matches which according to Lye et al. may be fortuitous. According to Appellants, Lye et al. does not disclose any gene or gene product but the results of a first run effort to sequence the entire XIII chromosome of *S. cerevisiae* and that the information provided by Lye et al is just a sequence which is an inherent property of the chromosome. Appellants submit that the Examiner uses Appellant's disclosure to find a motivation to create an expression vector. It is Appellant's contention that in the absence of any evidence of function, there is no motivation to select one out of thousands of ORFs of unknown function and operably link it to a promoter in an expression vector. It is Appellant's opinion that since there is no prior art suggestion of the function of the polynucleotide of SEQ ID NO: 1 or 3, cloning and expression of such polynucleotide using the techniques taught by Nozaki et al. or Sambrook et al., is not obvious and the claims are in compliance with 35 USC 102 and 103.

The Examiner acknowledges that (1) a predicted ORF may not encode a functional mRNA, (2) the method used by Lye et al. in regard to predictions of ORFs, and (3) the PROSITE database matches may be fortuitous. However the Examiner disagrees with Appellant's contention that there is no motivation to construct a vector in the absence of prior art suggestion of function. While Appellants may have empirically determined the function of the polynucleotide of SEQ ID NO: 3 and that of the corresponding protein (SEQ ID NO: 4), at the time the invention was made, it was known that the polynucleotide of SEQ ID NO: 3 was a potential open reading frame (ORF), i.e. polynucleotide encoding a protein. As such, as indicated above, one would be highly motivated to construct a vector comprising the polynucleotide of Lye et al. linked to a promoter to allow expression of the corresponding protein in a host cell, and transform a host cell with such vector for characterization of the protein and determination of its biological function. Also, as indicated above, one would link the polynucleotide (ORF) to a promoter since this is essential for expression in the host cell. One is motivated to characterize and determine the biological function of the yeast protein since yeast is a unicellular eukaryote widely studied

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in the art for identification of proteins and/or biological processes which may be found in higher eukaryotes including humans. In regard to arguments that the Examiner uses Appellant's disclosure to find a motivation to create an expression vector, it is noted that the motivation given by the prior Examiner of record or the present Examiner is not the same motivation disclosed by Appellants. Therefore, for the reasons set forth above, the construction of the claimed vector and transformation of the claimed host cell with such vector would have been obvious at the time the invention was made.

Allowable Subject Matter

13. Claims 33-34 and 41-42 appear to be allowable over the prior art of record but are objected to since depend upon a rejected base claim.

Conclusion

14. **THIS ACTION IS MADE FINAL.** As indicated above, prosecution of the instant application was reopened solely to include the paper copies of e-mail communications referred to in the Advisory Action mailed on 2/21/2002 as part of the record. As such, no new ground(s) of rejection have been introduced. Furthermore, as detailed in MPEP 2144.03, it is proper to make final an Office Action which merely adds documentary proof of the previous statement by the Examiner, i.e. that the creation date of a GenBank/EMBL entry is the date of public availability. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).


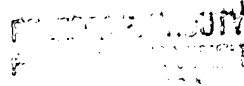
16. Certain papers related to this application may be submitted to Art Unit 1652 by facsimile transmission. The FAX number is (703) 308-4556. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If Applicant submits a paper by FAX, the original copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (703) 306-0288. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (703) 308-3804. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Delia M. Ramirez, Ph.D.
Patent Examiner
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DR
December 18, 2003



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